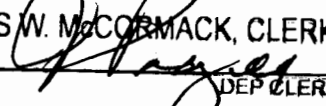


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL 02 2021

JAMES W. MCCORMACK, CLERK
By:  DEPT. CLERK

DYLAN BRANDT, et al.,)
)
Plaintiffs,)
)
v.)
)
LESLIE RUTLEDGE, et al.,)
)
Defendants.)
)
)
)

CASE NO. 4:21-CV-00450-JM

MOTION OF LIVERAMP HOLDINGS, INC. AND ADDITIONAL BUSINESS ORGANIZATIONS FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

The undersigned *amici curiae*—LiveRamp Holdings, Inc., Axiom LLC, Kinesso, LLC, the Northwest Arkansas Council, the Arkansas State Chamber of Commerce, and the Walton Family Foundation, Inc.—respectfully move for leave to file the attached *amicus* brief in support of Plaintiffs’ Motion for a Preliminary Injunction. Plaintiffs have informed *amici* that they consent to the filing of this motion. *Amici’s* counsel called, left a message, and emailed the Solicitor General to request its position, if any, on the motion. Thus far, no response has been received. A copy of the proposed brief has been submitted with this motion.

I. Interests of *Amici Curiae*

Amici are a group of six businesses and business organizations with extensive ties to the Arkansas economy and a deep and abiding commitment to supporting a diverse and inclusive workforce. *Amici* have a significant interest in preventing Arkansas from codifying discrimination against transgender people and, in the process, deterring current and potential employees, customers, and businesses from participating in the Arkansas economy. *Amici* also have an interest in advocating for their core organizational values—that all people, regardless of gender identity,

should be afforded dignity, respect, and equal treatment under the law. As detailed more fully in Plaintiffs' Motion for a Preliminary Injunction, Arkansas House Bill 1570 (enacted as Act 626 and also referred to as the "Health Care Ban") represents an unconstitutional assault on the rights of transgender people. It is, absent this Court's intervention, poised to strike at the very core of *amici's* interests as described above and in their accompanying brief.

II. District Courts Have Authority to Accept Amicus Briefs

Federal district courts possess the inherent authority to accept amicus briefs. *See, e.g., Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995); *see also In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249, n.34 (11th Cir. 2006) ("[D]istrict courts possess the inherent authority to appoint 'friends of the court' to assist in their proceedings."); *Rumble v. Fairview Health Servs.*, No. 14-CV-2037 (SRN/FLN), 2016 WL 6534407, at *1 (D. Minn. Nov. 3, 2016) (noting that "[w]hether amicus briefs may be filed is a matter left to the court's discretion."); *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) ("District courts have inherent authority to appoint or deny *amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure.") (citation omitted); *United States v. Davis*, 180 F. Supp. 2d 797, 800 (E.D. La. 2001) (noting that district courts have authority to permit the filing of amicus briefs); *United States v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992) ("District courts have broad discretion to permit . . . the appearance of *amici curiae* in a given case."), *aff'd*, 980 F.2d 161 (2d Cir. 1992).

The role of amicus briefs is to assist the court "in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by ensuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision." *Newark Branch, N.A.A.C.P. v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991)

(citation omitted). At the district court level, amicus briefs are allowed “where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance.” *Edgar v. Coats*, 454 F. Supp. 3d 502, 522 (D. Md. 2020), *aff’d sub nom. Edgar v. Haines*, No. 20-1568, 2021 WL 2557893 (4th Cir. June 23, 2021) (internal citations omitted); *see also Comty. Ass’n for Restoration of the Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash 1999) (explaining that “[a]n amicus brief should normally be allowed . . . when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”) (citing *N. Sec. Co. v. United States*, 191 U.S. 555, 556 (1903)). There are “no strict prerequisites” to qualify as an amicus; an organization or individual that seeks to appear must merely “make a showing that his [or its] participation is useful to or otherwise desirable to the court.” *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991).

The content and purpose of amicus briefs can include “background or factual references that merit judicial notice[,]” “particular expertise not possessed by any party to the case[,]” or explanations of the “impact a potential holding might have on an industry or other group.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 132 (3d Cir. 2002) (citation omitted). To this end, the views of *amici* from within the business community have been regularly accepted by courts in other cases pertaining to transgender rights. *See Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731 (2020) (accepting multiple amicus briefs from businesses or related industry groups); *G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 716 (4th Cir. 2016) (same), *vacated*, 137 S. Ct. 1239 (2017); *Evans v. Ga. Reg’l Hosp.*, 850 F.3d 1248 (11th Cir. 2017) (same).

III. Movants’ Brief Is Timely and Useful to the Disposition of the Issues Before the Court

This motion to appear is timely. The Court has not issued a substantive ruling on Plaintiffs’

Motion for a Preliminary Injunction and *amici* do not seek to change the briefing schedule. Moreover, *amici* offer an important body of information that is pertinent to the Court’s analysis of whether “the issuance of an injunction is in the public interest.” *Sanborn Mfg. Co. v. Campbell Hausfeld/Scott Fetzer Co.*, 997 F.2d 484, 485-86 (8th Cir. 1993) (citing *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc)). The issues presented before this Court have a significant effect on the rights of the transgender residents of Arkansas, including those transgender individuals who are current or potential employees, customers, and investors of *amici*. As leading members of the Arkansas business community, *amici* are well situated to assist the Court in understanding, among other things, the ramifications of the instant litigation on the interests of the business community—both economic and moral. *Amici’s* views and analysis will assist the Court’s consideration of the public interest in obtaining injunctive relief.

IV. Conclusion

For the foregoing reasons, *amici* respectfully request that this Court grant their motion for leave to file their proposed *Amicus Curiae* brief (attached hereto) in support of Plaintiffs’ Motion for a Preliminary Injunction.

Respectfully submitted on this 2nd day of July, 2021.


Boris Bershteyn
William J. O'Brien
Andrew J. Schrag
Mary C. Ross
Caleb B. King
J.G. Piper Sheren
Christoph Zhang

Counsel for Amici Curiae

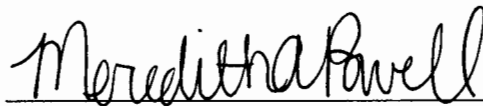
One Manhattan West
New York, New York 10001
Phone: (212) 735-3834
Fax: (917) 777-3834
boris.bershteyn@probonolaw.com
william.obrien@probonolaw.com
chzhang@probonolaw.com
mary.c.ross@probonolaw.com
caleb.king@probonolaw.com
andrew.schrag@probonolaw.com
piper.sheren@probonolaw.com



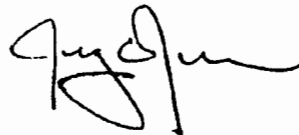
Steven W. Quattlebaum, Ark. Bar No. 84127
111 Center Street
Suite 1900
Little Rock, AR 72201
Phone: (501) 379-1707
Fax: (501) 379-1701
quattlebaum@qgtlaw.com



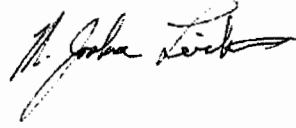
John E. Tull III, Ark. Bar No. 84150
111 Center Street
Suite 1900
Little Rock, AR 72201
Phone: (501) 379-1707
Fax: (501) 379-1701
jtull@qgtlaw.com



Meredith A. Powell, Ark. Bar No. 2019164
111 Center Street
Suite 1900
Little Rock, AR 72201
Phone: (501) 379-1707
Fax: (501) 379-1701
mpowell@qgtlaw.com



Jerry C. Jones, Ark. Bar No. 80073
EVP & Chief Legal & Ethics Officer
LiveRamp
301 Main Street, 2nd Floor
Little Rock, AR 72201
(501) 766-3359



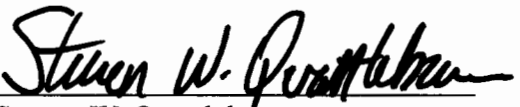
M. Joshua Leicht, Ark. Bar No. 92126
Kinesso, LLC General Counsel
Kinesso, LLC
301 Main Street
Little Rock, AR 72227



Shayne D. Smith, Ark. Bar No. 92126
Axiom LLC General Counsel
Axiom LLC
301 E. Dave Ward Dr.
Conway, AR 72032

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2021, I electronically filed the foregoing document with the Clerk of the Court for the Eastern District of Arkansas via the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.


Steven W. Quattlebaum

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DYLAN BRANDT, et al.,)

Plaintiffs,)

v.)

LESLIE RUTLEDGE, et al.,)

Defendants.)

CASE NO. 4:21-CV-00450-JM

**BRIEF OF AMICI CURIAE LIVERAMP HOLDINGS, INC. AND ADDITIONAL
BUSINESS ORGANIZATIONS IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

FEDERAL RULE OF CIVIL PROCEDURE 7.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel for LiveRamp Holdings, Inc., Acxiom LLC, Kinesso, LLC, the Northwest Arkansas Council, the Arkansas State Chamber of Commerce, and the Walton Family Foundation, Inc. certify that:

1. LiveRamp Holdings, Inc., the Northwest Arkansas Council, the Arkansas State Chamber of Commerce, and the Walton Family Foundation, Inc. respectively, have no parent corporation. Acxiom LLC and Kinesso, LLC are both wholly-owned subsidiaries of the Interpublic Group of Companies, Inc.

2. No corporations hold any stock in the Northwest Arkansas Council, the Arkansas State Chamber of Commerce, or the Walton Family Foundation, Inc.

TABLE OF CONTENTS

	<u>Page</u>
FEDERAL RULE OF CIVIL PROCEDURE 7.1 DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF INTEREST.....	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	4
I. The Health Care Ban Will Harm Amici’s Employees with Transgender Children by Depriving Them of Gender-Affirming Care, Which Will Adversely Affect Amici’s Businesses	4
II. The Health Care Ban Will Impair <i>Amici’s</i> Ability To Attract and Retain a Diverse, Inclusive, and Talented Workforce, Compromising Their Ability To Compete	5
III. The Health Care Ban Will Harm <i>Amici</i> —as Well as Other Arkansas Businesses—by Adversely Affecting Commerce Within the State	7
CONCLUSION.....	11

TABLE OF AUTHORITIES

Page(s)

CASES

Wright ex rel. A.W. v. Pulaski County Special School District,
803 F. Supp. 2d 980 (E.D. Ark. 2011).....4

OTHER AUTHORITIES

Andrew Bender, *Indiana’s Religious Freedom Act Cost Indianapolis \$60 Million in Lost Revenue*, *Forbes* (Jan. 31, 2016),
<https://www.forbes.com/sites/andrewbender/2016/01/31/indianas-religious-freedom-act-cost-indianapolis-60-million-in-lost-revenue/?sh=2744eb302e2a>.....9

Andrew R. Flores et al., The Williams Institute, *How Many Adults Identify As Transgender in the United States?*, (June 2016),
<https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.....5

CNBC, *‘Bathroom bill’ to Cost North Carolina \$3.76 Billion*, (Mar. 27, 2017),
<https://www.cnn.com/2017/03/27/bathroom-bill-to-cost-north-carolina-376-billion.html>.....8

Colleen Jenkins & Daniel Trotta, Reuters, *Seeking End to Boycott, North Carolina Rescinds Transgender Bathroom Law* (Mar 30, 2017),
<https://www.reuters.com/article/us-north-carolina-lgbt/seeking-end-to-boycott-north-carolina-rescinds-transgender-bathroom-law-idUSKBN1711V4>.....8

Hannah Shirley, *Numbers show what many LGBTQIA North Dakotans already know: queer youth are moving out-of-state*, *Grand Forks Herald* (Sept. 21, 2020),
<https://www.grandforksherald.com/news/6657157-Numbers-show-what-many-LGBTQIA-North-Dakotans-already-know-queer-youth-are-moving-out-of-state>6

Human Rights Campaign Foundation, *2018 Municipal Equality Index: A Nationwide Evaluation of Municipal Law 6* (2018),
https://assets2.hrc.org/files/assets/resources/MEI-2018-FullReport.pdf?_ga=2.15852848.708132622.1539091881-381389559.1535552870.....7

Jamie Weiss, *Mother, Trans Daughter Leaving Arkansas Ahead of New Legislation Taking Effect*, *40/29 News* (May 25, 2021),
<https://www.4029tv.com/article/arkansas-mother-trans-daughter-fleeing-arkansas-ahead-of-new-legislation-taking-effect/36524446#>.....6

Jo Yurcaba, *'It's not safe': Parents of Transgender Kids Plan to Flee Their States As GOP Bills Loom*, NBC News (Apr. 19, 2021), <https://www.nbcnews.com/feature/nbc-out/it-s-not-safe-parents-transgender-kids-plan-flee-their-n1264506>6

Jon Kamp & Valerie Bauerlein, *Deutsche Bank Freezes North Carolina Expansion, Citing Transgender Law*, Wall St. J. (Apr. 12, 2016), <https://www.wsj.com/articles/deutsche-bank-freezes-north-carolina-expansion-citing-transgender-law-1460469042>8

Jon Kamp & Valerie Bauerlein, *PayPal Cancels Plan for Facility in North Carolina, Citing Transgender Law*, Wall St. J. (Apr. 5, 2016), <https://www.wsj.com/articles/paypal-cancels-plans-for-operations-center-400-jobs-over-north-carolinas-transgender-law-1459872277#:~:text=Valerie%20Bauerlein,-Biography&text=PayPal%20Holdings%20Inc.,Charlotte%2C%20the%20state's%20biggest%20city>8

Katelyn Burns, *Arkansas Faces a Trans Exodus After Passing 3 Anti-Trans Bills in 3 Weeks*, Business Insider (Apr. 7, 2021), <https://www.businessinsider.com/arkansas-3-anti-trans-bills-in-3-weeks-triggers-exodus-2021-4>.....6

Laura Wagner, *Bruce Springsteen Cancels Show in North Carolina To Protest 'Bathroom Bill'*, NPR (Apr. 8, 2016), <https://www.npr.org/sections/thetwo-way/2016/04/08/473566753/bruce-springsteen-cancels-show-in-north-carolina-to-protest-bathroom-bill>8

M. Ray Perryman, *The Economic and Fiscal Price of Restricting Bathroom Access*, Perryman Group (Apr. 19, 2017), <https://www.perrymangroup.com/publications/column/2017/4/24/the-economic-and-fiscal-price-of-restricting-bathroom-access/>9

M. Ray Perryman, *The Potential Impact of Social Legislation on Business Activity*, Perryman Group (Apr. 18, 2017), <https://www.perrymangroup.com/media/uploads/report/perryman-the-potential-impact-of-social-legislation-on-business-activity-04-18-17.pdf>9

Matt Loffman, *New poll shows Americans overwhelmingly oppose anti-transgender laws*, PBS (Apr. 16, 2021), <https://www.pbs.org/newshour/politics/new-poll-shows-americans-overwhelmingly-oppose-anti-transgender-laws>10

Matt Motyl et al., *How Ideological Migration Geographically Segregates Groups*, 51 J. Experimental Soc. Psychol. 1 (2014), <http://tinyurl.com/j8pkoul>6

Michael Cooper, *Itzhak Perlman Cancels Concert in North Carolina, Citing Bias Law*, N.Y. Times (May 17, 2016), <https://www.nytimes.com/2016/05/18/arts/music/itzhak-perlman-cancels-concert-in-north-carolina-citing-bias-law.html>8

Nico Lang, *Transphobic Legislation Is Forcing Arkansas Families to Abandon the State*, them. (Apr. 27, 2021), <https://www.them.us/story/transphobic-legislation-forcing-arkansas-families-abandon-state>6

Olga Rodriguez, *California Bans State Travel to Arkansas, 4 Other States*, Arkansas Business (June 29, 2021), https://www.arkansasbusiness.com/article/136366/california-bans-state-travel-to-arkansas-4-other-states?utm_source=enews_062921&utm_medium=email&utm_content=morning-roundup&utm_campaign=newsletter&enews_zone=38749

Pathfinder Opinion Research, *Nationwide Survey of LGBTQ Adults*, Apr. 23, 2021; <https://www.glaad.org/sites/default/files/Pathfinder%20Opinion%20Research%20Memo%20GLAAD%20100%20days%20poll.pdf>10

Pierre Dupreelle et al., Boston Consulting Group, *A New LGBTQ Workforce Has Arrived—Inclusive Cultures Must Follow* (June 2020), <https://www.bcg.com/publications/2020/inclusive-cultures-must-follow-new-lgbtq-workforce>7

Press Release, Dan Schulman, President & CEO of PayPal, *PayPal Withdraws Plan for Charlotte Expansion* (Apr. 5, 2016), <https://newsroom.paypal-corp.com/PayPal-Withdraws-Plan-for-Charlotte-Expansion>8

STATEMENT OF INTEREST

Amici are leading members of the business and philanthropic community in Arkansas. This community includes nationally recognized companies, trade associations, and non-profit organizations.

LiveRamp Holdings, Inc. (“LiveRamp”) is an S&P 400 company that offers a leading data connectivity platform. Founded in Conway, Arkansas, in 1969, LiveRamp provides services and infrastructure allowing companies to connect, control, and activate data to create more valuable business outcomes. LiveRamp seeks to foster an inclusive and welcoming workplace for all of its employees. Its Diversity, Inclusion, and Belonging (“DIB”) efforts include EQUAL, a grassroots group for Queer and Allied employees of LiveRamp that champions cultural transformation and workplace inclusivity.

Kinesso, LLC (“Kinesso”), a wholly-owned subsidiary of The Interpublic Group of Companies, Inc., provides marketing intelligence services, leveraging data, planning, and marketing expertise to help clients execute successful campaigns. Kinesso seeks to cultivate an inclusive and welcoming workplace for its employees, as reflected in its Diversity, Equity, and Inclusion (“DEI”) programming. These programs aim to create meaningful ways for employees to engage in creating the diverse and inclusive culture that is central to the company’s values.

Acxiom LLC (“Acxiom”), a wholly-owned subsidiary of The Interpublic Group of Companies, Inc., is a customer intelligence company that provides data-driven solutions to enable the world’s best marketers to better understand their customers to create better experiences and business growth. Acxiom endeavors to create an inclusive and welcoming workplace for all of its employees. To this end, Acxiom has established an IDEA Council to advance cross-company

diversity and inclusion strategies. These initiatives include the creation of the LGBTQ+Acxiom affinity group, as well as community engagement programs with organizations like the Women's Foundation of Arkansas.

Northwest Arkansas Council ("NWA Council") is a 501(c)(6) non-profit organization working to improve and advance job opportunities, talent recruitment, physical infrastructure, health care, and quality of life. The NWA Council was founded by prominent Arkansas business leaders. NWA Council seeks to build and foster a diverse, as well as inclusive, business community in the Northwest Arkansas region. NWA Council's initiative, EngageNWA, aims to facilitate diversity across all levels, sectors, and communities in Northwest Arkansas—because regions with diverse communities perform better economically.

The Arkansas Chamber of Commerce ("ACC") is the leading voice for Arkansas businesses and serves as the primary business advocate on all issues affecting Arkansas employers. With nearly 1,200 members, ACC represents a network of companies whose common goal is to improve the business climate in Arkansas. This includes promoting greater diversity, equity, and inclusion.

The Walton Family Foundation, Inc. ("WFF") is a 501(c)(3) family-led foundation where three generations of the descendants of founders Sam and Helen Walton, and their spouses, work together to create access to opportunity for people and communities. WFF primarily focuses its charitable efforts on improving K-12 education, protecting rivers and oceans, and creating opportunity and enhancing quality of life for all in Northwest Arkansas and the Arkansas-Mississippi Delta. In February 2021, WFF announced a new five-year strategic plan, which reaffirmed WFF's commitment to elevating organizations from diverse backgrounds and

encouraging WFF's partners to prioritize diversity, equity, and inclusion. WFF is supporting efforts to advance Arkansas as one of the most vibrant and inclusive communities in the nation.

Amici share a commitment to equality, respect, and dignity for all people, regardless of their gender identity. This commitment has manifested itself in their support and defense of public policies that protect the civil rights of transgender people. Through these policies, *amici* hope to foster acceptance and equal treatment for all of their employees, customers, and the families of both. Many *amici* employ and serve transgender people, and all *amici* oppose the Arkansas General Assembly's passage of HB 1570 ("Health Care Ban"), which discriminates against transgender people by, among other things, barring health care professionals from providing gender-affirming care to transgender youth. As detailed below, the Health Care Ban will, absent this Court's intervention, adversely impact *amici's* (or their members') businesses, employees, and customers.

SUMMARY OF ARGUMENT

If allowed to go into effect, the Health Care Ban will harm the businesses of *amici* or *amici's* members. The Health Care Ban will directly harm *amici's* employees who have transgender children, by depriving those children of necessary gender-affirming care. The Health Care Ban will also impair *amici's* ability to attract and retain a diverse, inclusive, and talented workforce, which will compromise *amici's* ability to compete. Finally, the Health Care Ban will harm *amici*—as well as other Arkansas businesses—by adversely affecting commerce within the state. Accordingly, *amici* unequivocally support plaintiffs' motion for a preliminary injunction to enjoin the Health Care Ban from taking effect and believe an injunction would advance the public interest. *See, e.g., Wright ex rel. A.W. v. Pulaski Cnty. Special Sch. Dist.*, 803 F. Supp. 2d 980, 984 (E.D. Ark. 2011) (“[T]he public interest supports a preliminary injunction because the Eighth Circuit Court of Appeals has held that, ‘. . . it is always in the public interest to protect constitutional rights.’” (citing *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008))).

ARGUMENT

I. The Health Care Ban Will Harm Amici's Employees with Transgender Children by Depriving Them of Gender-Affirming Care, Which Will Adversely Affect Amici's Businesses

Amici's workforce includes the parents of transgender children, and the Health Care Ban will compel these employees to choose among three disruptive—and equally unnecessary—options: traveling out-of-state to obtain gender-affirming treatment; altering the course of their children's care; or moving to any other state to obtain treatments that only the State of Arkansas denies transgender children. Each option will harm *amici* and other Arkansas businesses. If employees travel out of state for medical care, their absences from work will increase, leading to

a corresponding decline in productivity and effectiveness. The forced termination of their children's gender-affirming care, which can cause significant harm to transgender youth with gender dysphoria—including severe distress, self-harm, and suicidality—will undoubtedly reduce employees' well-being and morale. And *amici* may forever lose the accumulated experience and expertise of an employee who leaves the state to permit a child to receive necessary medical care. Put simply, no matter which path an employee takes, *amici's* businesses will suffer.

These losses are not hypothetical. *Amici* know of employees with transgender children who have indicated they will leave Arkansas if the Health Care Ban takes effect. *Amici* collectively employ thousands of individuals in the State of Arkansas. Because transgender persons comprise approximately 0.6% of the population,¹ *amici* anticipate that the Health Care Ban will have a profoundly negative and recurring effect on their workforce.

II. The Health Care Ban Will Impair *Amici's* Ability To Attract and Retain a Diverse, Inclusive, and Talented Workforce, Compromising Their Ability To Compete

The Health Care Ban sends a message that transgender people are not welcome in the State of Arkansas—that the expression of their true identity is neither valued nor respected by their elected representatives. This codified form of discrimination will impair the ability of *amici* and their members to attract and retain a diverse, inclusive, and talented workforce. As a result, it will place Arkansas' businesses at a competitive disadvantage, both domestically and on the global stage.

First, the Health Care Ban will both encourage Arkansas' citizens who are LGBTQ (along with their families) to leave the state and discourage LGBTQ individuals and their families from

¹ See Andrew R. Flores et al., *How Many Adults Identify As Transgender in the United States?*, The Williams Institute (June 2016), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.

moving into the state. It is axiomatic that when a community stigmatizes a class of persons, members of that class—and others who abhor discrimination—avoid living in that community. These effects are not mere abstractions: studies confirm that individuals and families tend to move from unsupportive communities to those that align with their values.² This phenomenon has already been observed in North Dakota, which LGBTQ individuals are leaving, due in part to the state’s “at best frigidly indifferent and at worst openly hostile” attitude.³ Indeed, while 9% of North Dakotan youth identify as queer, that number falls to 6% among university-aged individuals and drops below 3% for adults.⁴ It is hardly surprising, then, that after the Health Care Ban announcement, several families with transgender individuals have announced they were leaving Arkansas.⁵

² Matt Motyl et al., *How Ideological Migration Geographically Segregates Groups*, 51 *J. Experimental Soc. Psychol.* 1 (2014), https://motyl.people.uic.edu/MIOTN_Migration_JESP_2014.pdf (individuals are moving from ideologically incongruent communities to congruent communities).

³ Hannah Shirley, *Numbers show what many LGBTQIA North Dakotans already know: queer youth are moving out-of-state*, *Grand Forks Herald* (Sept. 21, 2020), <https://www.grandforksherald.com/news/6657157-Numbers-show-what-many-LGBTQIA-North-Dakotans-already-know-queer-youth-are-moving-out-of-state>.

⁴ *Id.*

⁵ Jamie Weiss, *Mother, Trans Daughter Leaving Arkansas Ahead of New Legislation Taking Effect*, 40/29 News (May 25, 2021), <https://www.4029tv.com/article/arkansas-mother-trans-daughter-fleeing-arkansas-ahead-of-new-legislation-taking-effect/36524446#> (Shirley Taylor, the mother of a transgender 11 year-old, plans to leave the state at the end of the school year “to start fresh in a place they hope will be more welcoming”); Jo Yurcaba, *‘It’s not safe’: Parents of Transgender Kids Plan to Flee Their States As GOP Bills Loom*, NBC News (Apr. 19, 2021), <https://www.nbcnews.com/feature/nbc-out/it-s-not-safe-parents-transgender-kids-plan-flee-their-n1264506> (Amanda Dennis, mother of an 8-year-old transgender daughter, told NBC News she is prepared to move to protect her children, stating, “[t]he benefits are not going to outweigh the dangers of raising our children here in this state”); Katelyn Burns, *Arkansas Faces a Trans Exodus After Passing 3 Anti-Trans Bills in 3 Weeks*, *Business Insider* (Apr. 7, 2021), <https://www.businessinsider.com/arkansas-3-anti-trans-bills-in-3-weeks-triggers-exodus-2021-4> (Jacqueline Middleton, a 23 year-old transgender woman, is planning on leaving the state over the Health Care Ban); Nico Lang, *Transphobic Legislation Is Forcing Arkansas Families to Abandon the State*, *them.* (Apr. 27, 2021), <https://www.them.us/story/transphobic-legislation-forcing-arkansas-families-abandon-state> (the mother of a transgender student says although she “‘can’t imagine how we would be able to stay somewhere that has so clearly told us that we’re not welcome,’ she knows that moving will take a major toll on their family”).

Second, the Health Care Ban will compromise *amici's* ability to recruit *non-LGBTQ* workers. Studies show that heterosexual Generation Z and Millennial employees care especially deeply about inclusion, and place a higher premium on cultural awareness.⁶ Similarly, research conducted by Richard Florida, a prominent American urban studies researcher, author, and professor, shows that “members of the creative class” in particular (roughly 50 million people including scientists, engineers, entrepreneurs, researchers and academics, architects, designers, artists, entertainers, and professionals in business, media, management, health care, and law) use diversity as a proxy for determining whether a city would provide a welcoming home.⁷ The Health Care Ban will likely deter these individuals from coming to work for *amici* in Arkansas—*regardless* of their sexual orientation or gender identity.

The Health Care Ban will thus hamper the efforts of *amici* (or *amici's* members) to recruit a diverse workforce and will materially impair their ability to compete domestically and globally.

III. The Health Care Ban Will Harm *Amici*—as Well as Other Arkansas Businesses—by Adversely Affecting Commerce Within the State

If the Health Care Ban takes effect, the backlash—from consumers and businesses alike—is likely to be fierce, causing a decline in economic activity within the state. This will inflict substantial harm on *amici*, Arkansas businesses, and all Arkansans, because all benefit from a strong economy.

⁶ See Pierre Dupreelle et al., *A New LGBTQ Workforce Has Arrived—Inclusive Cultures Must Follow*, Boston Consulting Group (June 23, 2020), <https://www.bcg.com/publications/2020/inclusive-cultures-must-follow-new-lgbtq-workforce>.

⁷ Human Rights Campaign Found., *2018 Municipal Equality Index: A Nationwide Evaluation of Municipal Law* 6 (2018), https://assets2.hrc.org/files/assets/resources/MEI-2018-FullReport.pdf?_ga=2.15852848.708132622.1539091881-381389559.1535552870.

Other states have faced adverse economic consequences for discriminating against the LGBTQ community. When the North Carolina legislature passed a so-called “bathroom bill” targeting transgender individuals, consumer boycotts led to hundreds of millions, if not billions, of dollars in lost revenue.⁸ Businesses also responded. PayPal announced that it was abandoning plans to build a new global operations center in Charlotte because the “bathroom bill,” like the Health Care Ban, “perpetuates discrimination” based on gender identity and “violates the values and principles that are at the core of PayPal’s mission and culture.”⁹ Deutsche Bank froze a planned North Carolina expansion that would have brought 250 jobs to the Raleigh-Durham area.¹⁰ Entertainers like Bruce Springsteen and Itzhak Perlman also expressed their opposition by cancelling concerts.¹¹

⁸ Coleen Jenkins & Daniel Trotta, *Seeking End to Boycott, North Carolina Rescinds Transgender Bathroom Law*, Reuters (Mar 30, 2017), <https://www.reuters.com/article/us-north-carolina-lgbt/seeking-end-to-boycott-north-carolina-rescinds-transgender-bathroom-law-idUSKBN1711V4>; CNBC, *'Bathroom bill' to Cost North Carolina \$3.76 Billion* (Mar. 27, 2017), <https://www.cnbc.com/2017/03/27/bathroom-bill-to-cost-north-carolina-376-billion.html> (“[T]he law limiting LGBT protections will cost the state more than \$3.76 billion in lost business over a dozen years.”).

⁹ Press Release, Dan Schulman, President & CEO of PayPal, *PayPal Withdraws Plan for Charlotte Expansion* (Apr. 5, 2016), <https://newsroom.paypal-corp.com/PayPal-Withdraws-Plan-for-Charlotte-Expansion>; Jon Kamp & Valerie Bauerlein, *PayPal Cancels Plan for Facility in North Carolina, Citing Transgender Law*, Wall St. J. (Apr. 5, 2016), <https://www.wsj.com/articles/paypal-cancels-plans-for-operations-center-400-jobs-over-north-carolinas-transgender-law-1459872277#:~:text=Valerie%20Bauerlein,-Biography&text=PayPal%20Holdings%20Inc.,Charlotte%2C%20the%20state's%20biggest%20city..>

¹⁰ Jon Kamp & Valerie Bauerlein, *Deutsche Bank Freezes North Carolina Expansion, Citing Transgender Law*, Wall St. J. (Apr. 12, 2016), <https://www.wsj.com/articles/deutsche-bank-freezes-north-carolina-expansion-citing-transgender-law-1460469042..>

¹¹ Michael Cooper, *Itzhak Perlman Cancels Concert in North Carolina, Citing Bias Law*, N.Y. Times (May 17, 2016), <https://www.nytimes.com/2016/05/18/arts/music/itzhak-perlman-cancels-concert-in-north-carolina-citing-bias-law.html>; Laura Wagner, *Bruce Springsteen Cancels Show in North Carolina To Protest 'Bathroom Bill'*, NPR (Apr. 8, 2016), <https://www.npr.org/sections/thetwo-way/2016/04/08/473566753/bruce-springsteen-cancels-show-in-north-carolina-to-protest-bathroom-bill>.

When a state sanctions discrimination against the LGBTQ community, travel and tourism suffer as well. “[S]cheduling an event in a location with a law that is considered to be offensive by some groups can be interpreted as support for the policy, and some organizations will choose to avoid locations with controversial laws in order to avoid the appearance of approval of the public policy.”¹² In Texas, for instance, an anti-transgender “bathroom bill” was estimated to cause losses of approximately \$3.3 billion per year in travel and tourism, 35,600 full-time-equivalent jobs, \$176.4 million in state revenue, and \$84.3 million in local fiscal resources.¹³ Indiana suffered a similar response in 2015 when it enacted a law that discriminated against LGBTQ individuals. Shortly after its passage, “the city’s convention bookings with organizations based outside of Indiana dropped 43%” and, for the rest of the year, “the drop was 28%.”¹⁴ Tellingly, at least twelve different companies cited the discriminatory legislation as the reason they chose not to come.¹⁵

It is reasonable to infer that the Health Care Ban—arguably the most repressive anti-transgender law in the country—will have an equally far-reaching impact on commerce. Indeed, Arkansas is already being penalized for its passage of the Health Care Ban. Just this week, California announced a prohibition on state-funded travel to Arkansas as a direct result of this

¹² M. Ray Perryman, *The Potential Impact of Social Legislation on Business Activity*, Perryman Group, (Apr. 18, 2017), <https://www.perrymangroup.com/media/uploads/report/perryman-the-potential-impact-of-social-legislation-on-business-activity-04-18-17.pdf>.

¹³ M. Ray Perryman, *The Economic and Fiscal Price of Restricting Bathroom Access*, Perryman Group, (Apr. 19, 2017), <https://www.perrymangroup.com/publications/column/2017/4/24/the-economic-and-fiscal-price-of-restricting-bathroom-access/>.

¹⁴ Andrew Bender, *Indiana’s Religious Freedom Act Cost Indianapolis \$60 Million in Lost Revenue*, *Forbes* (Jan. 31, 2016), <https://www.forbes.com/sites/andrewbender/2016/01/31/indianas-religious-freedom-act-cost-indianapolis-60-million-in-lost-revenue/?sh=2744eb302e2a>.

¹⁵ *Id.*

legislation.¹⁶ More generally, it is estimated that 28% of LGBTQ adults will not buy products or services from companies that are headquartered in states that pass anti-transgender legislation.¹⁷ A recent poll, moreover, revealed that 66% of all adults nationwide oppose legislation that prohibits gender-affirming care for minors.¹⁸ This data, when read in tandem with the California travel ban, suggests that Arkansas businesses are going to pay a steep price for the discriminatory actions of their elected representatives.

Finally, the Health Care Ban may interfere with the ability of those *amici* with locations outside the state to efficiently allocate their workforce. Numerous Arkansas businesses maintain operations—or parts of operations—in other regions of the country or the world. Since every other state recognizes the rights of transgender individuals to be given gender-affirming healthcare while Arkansas deprives them of those rights, transgender employees, employees with transgender children, or even employees who prefer to work in a community that does not discriminate, will be less willing to transfer to the State of Arkansas. This will, by necessity, interfere with the ability of these businesses to deploy their workforce in an efficient and effective manner.

¹⁶ Olga Rodriguez, *California Bans State Travel to Arkansas, 4 Other States*, Arkansas Business (June 29, 2021), https://www.arkansasbusiness.com/article/136366/california-bans-state-travel-to-arkansas-4-other-states?utm_source=news_062921&utm_medium=email&utm_content=morning-roundup&utm_campaign=newsletter&news_zone=3874 (last accessed June 29, 2021).

¹⁷ Pathfinder Opinion Research, *Nationwide Survey of LGBTQ Adults* (Apr. 23, 2021), <https://www.glaad.org/sites/default/files/Pathfinder%20Opinion%20Research%20Memo%20GLAAD%20100%20days%20poll.pdf> (last accessed June 28, 2021).

¹⁸ Matt Loffman, *New poll shows Americans overwhelmingly oppose anti-transgender laws*, PBS (Apr. 16, 2021), <https://www.pbs.org/newshour/politics/new-poll-shows-americans-overwhelmingly-oppose-anti-transgender-laws>.

CONCLUSION


The Health Care Ban undermines *amici's* concerted efforts to build a tolerant, diverse, and thriving Arkansas business community—and will inflict economic harm on *amici* and this community. It is manifestly not in the public interest. Accordingly, *amici* support plaintiffs' motion for a preliminary injunction.


Respectfully submitted on this 2nd day of July, 2021.

Boris Bershteyn
William J. O'Brien
Andrew J. Schrag
Mary C. Ross
Caleb B. King
J.G. Piper Sheren
Christoph Zhang


Counsel for Amici Curiae

One Manhattan West
New York, New York 10001
Phone: (212) 735-3834
Fax: (917) 777-3834
boris.bershteyn@probonolaw.com
william.obrien@probonolaw.com
chzhang@probonolaw.com
mary.c.ross@probonolaw.com
caleb.king@probonolaw.com
andrew.schrag@probonolaw.com
piper.sheren@probonolaw.com


Steven W. Quattlebaum, Ark. Bar No. 84127
111 Center Street
Suite 1900
Little Rock, AR 72201
Phone: (501) 379-1707
Fax: (501) 379-1701
quattlebaum@qgtlaw.com


John E. Tull III, Ark. Bar No. 84150
111 Center Street
Suite 1900
Little Rock, AR 72201
Phone: (501) 379-1707
Fax: (501) 379-1701
jtull@qgtlaw.com


Meredith A. Powell, Ark. Bar No. 2019164
111 Center Street
Suite 1900
Little Rock, AR 72201
Phone: (501) 379-1707
Fax: (501) 379-1701
mpowell@qgtlaw.com


Jerry C. Jones, Ark. Bar No. 80073
EVP & Chief Legal & Ethics Officer
LiveRamp
301 Main Street, 2nd Floor

Little Rock, AR 72201
(501) 766-3359



M. Joshua Leicht, Ark. Bar No. 92126
Kinesso, LLC General Counsel
Kinesso, LLC
301 Main Street
Little Rock, AR 72227



Shayne D. Smith, Ark. Bar No. 92126
Axiom LLC General Counsel
Axiom LLC
301 E. Dave Ward Dr.
Conway, AR 72032